



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 2, 2016

CBCA 5026-RELO

In the Matter of ROGER W. BUTERBAUGH

Roger W. Buterbaugh, Huntsville, AL, Claimant.

Judith A. Fishel, Headquarters, United States Army Materiel Command, Redstone Arsenal, AL, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Roger W. Buterbaugh, an employee of the Department of the Army (Army), claims reimbursement in the amount of \$6000 for closing costs that he paid in connection with the sale of his home. For the reasons stated below, the claim is denied.

Background

On January 16, 2015, Mr. Buterbaugh was notified of his transfer to Redstone Arsenal, Alabama. Mr. Buterbaugh was employed by the Department of Veterans Affairs and resided in Martinez, Georgia, at the time of his transfer. Mr. Buterbaugh executed a contract for the sale of his home on February 22, 2015, and under the terms of the contract, he agreed to a "seller's contribution at closing" in the amount of \$12,000.

Closing on the sale of Mr. Buterbaugh's residence took place on April 9, 2015. Line 509 of the HUD-1 settlement statement showed "Seller Paid Closing Cost" in the amount of \$12,000, and line 209, which showed amounts paid by or on behalf of the borrower, similarly stated "Seller Paid Closing Cost" in the amount of \$12,000. The HUD-1 provided no information as to what specific costs were contained in that \$12,000 amount.

On or about May 20, 2015, Mr. Buterbaugh submitted to the Army his claim for the real estate transaction expenses, which included closing costs in the amount of \$12,000.¹ The Army denied the \$12,000 claim because Mr. Buterbaugh had not shown that payment of such a cost was customary in that locality. Mr. Buterbaugh subsequently filed his claim with the Board for \$6000, which he contended was the seller's half of the \$12,000 in closing costs that he had paid.

Discussion

The issue in this matter is whether Mr. Buterbaugh is entitled to reimbursement in the amount of \$6000, which he contends was his share of the \$12,000 closing cost he previously claimed. The Federal Travel Regulation (FTR) provides that an employee will be reimbursed for real estate transaction expenses “[p]rovided the residence transaction expenses are customarily charged to the seller of a residence in the locality of the old official station.” 41 CFR 302-11.200 (2014). The Joint Travel Regulations (JTR), which also apply to Mr. Buterbaugh, similarly provide that reimbursement of real estate transaction expenses requires a finding that such expenses “are . . . [r]easonable in amount, and . . . [c]ustomarily paid by the seller or buyer (as appropriate) in the locality where the property is located.” JTR 5915-C.1. “[T]he term ‘customarily’ refers to what is ‘usual, normal, habitual, or routine’ and reflects ‘a common tradition or usage so long established that it has the force or validity of law.’” *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA ¶ 36,192, at 176,574 (2015). The claimant has the burden of proving by a preponderance of evidence that payment of an expense related to a real estate transaction is customary in that locality. *Michael Vincelli*, CBCA 1828-RELO, 10-1 BCA ¶ 34,461, at 170,019.

Mr. Buterbaugh has not met his burden of proof. He has neither explained nor presented evidence to show what expenses are represented in the \$6000 amount that he now claims. Additionally, he has not shown that payment of \$6000 at closing was customary in the locality in which he sold his home. Moreover, the contract for the sale of Mr. Buterbaugh's home and the HUD-1 show that he agreed to pay \$12,000 toward the buyer's closing costs. The Board finds that Mr. Buterbaugh's \$6000 claim is half of the \$12,000 “lump sum” that he paid on behalf of the buyer, and he has not shown that payment of the buyer's closing costs was customary in Martinez, Georgia. See *Mahmood Ramzan*, CBCA 3287-RELO, 13 BCA ¶ 35,386, at 173,631 (seller's payment of \$10,000 was a “lump

¹ Mr. Buterbaugh's claim for real estate expenses totaled \$26,700. Of that amount, the Army reimbursed him for the realtor's commission, which was \$13,885. The Army denied his claim for repairs, which was \$815.

sum” credit for the buyer rather than a payment of specific settlement charges customarily paid).

Mr. Buterbaugh has also asserted that he did not receive guidance from the Army regarding the payment of the buyer’s closing costs, and he “should not be penalized for the agency’s failure to provide sufficient guidance in advance.” The Board, however, “cannot enlarge [a claimant’s] rights beyond those contained in statute and regulation.” *Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786, at 171,206. Additionally, “it is well established that an employee is charged with a constructive understanding of the applicable travel regulations, and an employee cannot be reimbursed because he or she mistakenly believed that reimbursement would be allowed.” *Id.* (citing *Daniel H. Coney*, GSBGA 15444-RELO, 01-2 BCA ¶ 31,500, at 155,563). Accordingly, the Board cannot grant Mr. Buterbaugh’s claim simply because he contends that the Army did not provide adequate guidance as to which costs were allowable.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge